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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,204	01/04/2002	Vincent De Laforcade	05725.1006-00	3472
22852	7590	11/16/2005		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER PICKETT, JOHN G	
			ART UNIT 3728	PAPER NUMBER

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Tate

Office Action Summary	Application No. 10/035,204	Applicant(s) DE LAFORCADE, VINCENT	
	Examiner Gregory Pickett	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7,8,10-13,15-18,20-40,42,43,45-48,50 and 52-71 is/are rejected.
- 7) ☒ Claim(s) 6,9,14,19,41,44,49 and 51 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 15 July 2005 has been entered. Claims 1-71 are pending in the application. Claims 67-71 are new to the application.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 30-35 and 58-63 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 30 and 58 are directed to both a product and process. A single claim that claims both an apparatus and the method steps of using the apparatus is indefinite

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under 35 U.S.C. 112, 2nd paragraph. *Ex parte Lyell*, 17 USPQ2d 1548 (Bd. Pat. App. & Inter. 1990). See MPEP 2173.05(p)(II.).

Claims 31-35 are dependent on claim 30 and are rejected for the above reason.

Claims 59-63 are dependent on claim 58 and are rejected for the above reason.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 30-35 and 58-63 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 30 and 58 are directed to neither a “process” nor “machine” but rather embrace or overlap two different statutory classes. 35 U.S.C. 101 is drafted so as to set forth the statutory classes of invention in the alternative only. See MPEP 2173.05(p)(II.).

Claims 31-35 are dependent on claim 30 and are rejected for the above reason.

Claims 59-63 are dependent on claim 58 and are rejected for the above reason.

Claim Rejections - 35 USC § 103

5. Claims 1-5, 7, 8, 10-13, 15-18, 20-40, 42, 43, 45-48, 50, and 52-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goncalves (US 5,209,565) in view of admitted prior art and Spielman (US 3,941,270).

In paragraph [003] of the instant application, the applicant describes the prior art and notes that the cap of a tube of dye cream, "may be closed by a cap, which may have a spike on its exterior top wall." This is considered admitted prior art. The spike designed to perforate the tube seal and can be considered a "perforating member".

Claims 1, 21, 22, 64, 66, 67, 69, and 71: Goncalves discloses a system for mixing at least two products (see Figure 1) comprising a first container 3 with a first opening (portion defined by neck 28), first coupler 21, and safety member 19; and a second container 2 comprising a second opening (portion defined by neck 6), seal 7, second coupler 8, and removable stopper 9. At an instantaneous position during connection of the two containers, the safety member contacts the seal without breaking; therefore the safety member is considered "configured to" press against the seal as claimed. The first opening is not completely obstructed by safety member 19 (note portion 18) and since safety member extends into the area defined by neck 28, it is considered to extend through the first opening.

Goncalves merely lacks the perforating member and a blunt safety member.

As to the perforating member, paragraph [003] of the instant application notes that it was common to provide the cap (i.e. removable stopper) with a spike capable perforating the seal of a tube. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide removable stopper 9 of Goncalves with a spike, as was common practice, in order to enable manual puncturing of seal 7 and thereby allow separate use of tube 2.

As to the blunt safety member, Goncalves (as modified with a spike on its cap) discloses the claimed invention except that Goncalves uses a sharp safety member instead of a blunt safety member. Spielman shows that a blunt safety member **48** was an equivalent structure known in the art (see Figures 2 and 3 as compared to Goncalves, Figure 2). One of ordinary skill in the art would recognize that each piercing means would have its own advantages and disadvantages yet both are suitable for the function of piercing the seal. For example, the sharp edge creates a better tear of the seal but would be expensive to make due to the creation of the sharp edge; conversely the blunt edge would be less expensive to fabricate. Accordingly, because these two piercing means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the blunt safety member of Spielman for the sharp safety member of Goncalves in order to reduce the costs of fabrication.

Claim 2: seal **7** of Goncalves is a film seal.

Claims 4, 5: safety member **48** of Spielman extends beyond the first opening as claimed.

Claims 7, 8, and 10: As evidenced by claim 10, the opening element/cutting device can be a portion of the safety member. As such, the wedge-shaped sides of the tip of Spielman can be considered an opening element/cutting device since they affect the spreading and subsequent cutting of the inserted seal.

Claim 11: Goncalves discloses couplers **8** and **21** that are screw threads.

Claims 12, 13, 15-17: Goncalves discloses a neck (portion at base of **40**) and hollow shaft **20** with coupler **21** located on hollow shaft **20**, head **15**, and body **12**. The safety member extends within the hollow shaft.

Claim 23: container **3** of Goncalves is plastic and is elastically deformable.

Claim 24: Goncalves discloses the claimed invention except for the claimed polyethylene material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container in the claimed material in order to provide a lightweight and durable container. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claim 25: container **2** of Goncalves is a tube.

Claim 26: Goncalves discloses the claimed invention except for the claimed aluminum material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container in the claimed material in order to provide a lightweight and durable container. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claims 27-29: Goncalves discloses the claimed products (see for example, Col. 1, lines 14-24).

Claims 30-35: insofar as the examiner can determine the scope of the claim, Goncalves-Spielman, as applied to claim 1 above, discloses the claimed method (see Goncalves Figure 2).

Claims 3, 36, 38, 53, 54, and 68: Goncalves-Spielman, as applied to claim 1 above, discloses the claimed invention. The safety member of Spielman is configured as claimed.

Claim 37: seal **7** of Goncalves is a film seal.

Claims 39 and 40: safety member **48** of Spielman extends beyond the first opening as claimed.

Claims 42, 43, and 45: As evidenced by claim 45, the opening element/cutting device can be a portion of the safety member. As such, the wedge-shaped sides of the tip of Spielman can be considered an opening element/cutting device since they affect the spreading and subsequent cutting of the inserted seal.

Claim 46: Goncalves discloses couplers **8** and **21** that are screw threads.

Claims 47, 48: Goncalves discloses a neck (portion at base of **40**) and hollow shaft **20** with coupler **21** located on hollow shaft **20**, head **15**, and body **12**. The safety member extends within the hollow shaft.

Claims 55-57: Goncalves discloses the claimed products (see for example, Col. 1, lines 14-24).

Claims 58-63: insofar as the examiner can determine the scope of the claim, Goncalves-Spielman, as applied to claim 36 above, discloses the claimed method (see Goncalves Figure 2).

Claims 18, 20, 50, 52, 65 and 70: Goncalves-Spielman, as applied to claim 1 above, discloses the claimed invention, including cap member **16**. Shaping of the cap member (for example with a dome top) to accommodate the blunt safety member of

Spielman would have been obvious in order to maintain its stated function of closing the opening (portion defined by neck **28**). A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

Allowable Subject Matter

6. Claims 6, 9, 14, 19, 41, 44, 49, and 51 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Response to Arguments

8. Applicant's arguments with respect to claims 1-71 have been considered but are moot in view of the new ground(s) of rejection.

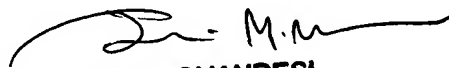
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GP
Greg Pickett
Examiner
8 November 2005


JILA M. MOHANDESI
PRIMARY EXAMINER